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SUPREME COURT, U.S.

No. 80-1783

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,
v.
BILLY LEE CHADD,
Respondent.

On Petition for a Writ of Certiorari
to the California Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION AND MOTION TO PROCEED IN FORMA PAUPERIS

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, BILLY LEE CHADD, respectfully requests that this Court deny the petition for a writ of certiorari to the California Supreme Court in this case.

A. Petitioner's Lack of Standing

Petitioner maintains that respondent's Faretta rights have been infringed by Penal Code section 1018. At no time has respondent ever claimed a violation of his Sixth Amendment rights -- not at trial, not on appeal, and not now. The state's assertion of respondent's rights is contrary not only to his wishes, but also to this Court's rules on standing.

"Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third

party." (Barrows v. Jackson (1953) 346 U.S. 249, 255, 97 L.Ed. 1586.) In the words of Mr. Justice Holmes, "unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections . . . ." (New York ex rel. Hatch v. Reardon (1907) 204 U.S. 152, 160, 51 L.Ed. 415.) Faretta was not fashioned for the State of California.

The standing doctrine is often invoked to answer an attempted vicarious assertion of a provision in the Bill of Rights. (E.g., Rakas v. Illinois (1978) 439 U.S. 128, 58 L.Ed.2d 387.) These are personal and cannot be raised by a third person.[1/]

There are, of course, rare instances when the state can protect its interest in the finality of judgments only by vicariously advancing a defendant's constitutional rights. (E.g., Illinois v. Somerville (1973) 410 U.S. 458, 35 L.Ed.2d 425.) This is not such a case. Respondent is vigorously not asserting his Sixth Amendment rights in this proceeding. On a retrial he can either ask to go pro. per. or not. If he does, then there will be a party with proper standing to raise the Faretta issue. If not then he will have waived the right for both state and federal collateral attack. (Wainwright v. Sykes (1977) 433 U.S. 72, 53 L.Ed.2d 594.)

The Sixth Amendment guarantees a "fundamental, personal right." (Pet. Cert., p. 43.) It has no place in a pleading filed by the state. It is tragically ludicrous for the state to champion respondent's "dignity, integrity

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1. The Ninth Circuit has so held with respect to Faretta. (United States v. Partin (1979) 601 F.2d 1000, 1006.)

and self-determination" (Pet. Cert., p. 36) so that it may kill him.

B. There Is No Justiciable Case or Controversy

"It is a familiar rule that the court will not anticipate the decision of a constitutional question upon a record which does not appropriately present it." (Tennessee Pub. Co. v. American Nat. Bank (1936) 299 U.S. 18, 22, 81 L.Ed. 13.) This record does not raise the issue framed by petitioner.

Respondent has "never made an unequivocal request to discharge [his attorney] and represent himself. . . ." (People v. Chadd (1981) 28 Cal.3d 739, 746.) The trial court admitted "there has been no request that he represent himself." (Chadd, 28 Cal.3d at 745-746, fn. 3.) Respondent has always been represented by counsel. He has never claimed his Sixth Amendment rights were violated.

The Petition seeks an opinion on a hypothetical question. It would be inappropriate, and an excess of jurisdiction, to decide the constitutionality of the California statute on this record. (See Doremus v. Board of Education (1952) 342 U.S. 429, 434, 96 L.Ed. 475; Bateman v. Arizona (1976) 429 U.S. 1302, 1305, 50 L.Ed.2d 32 (Rehnquist, J., as Circuit Justice).)

C. The California Law Does Not Impinge Upon Faretta

Since Furman four people have been executed in the United States. Three of those have wished to die. The "Gary Gilmore" syndrome is an infectious disease and a difficult problem for states that wish to have a death penalty and yet maintain integrity in and reliability of their legal systems.

The Eighth Amendment tells the states that a constitutional death penalty law must avoid arbitrariness and ensure accurate and reliable sentencing decisions. On the other hand, the Sixth Amendment guarantees the criminal defendant a certain degree of autonomy although at some cost to "the integrity of and public confidence in the system . . ." (Faretta v. California (1975) 422 U.S. 806, 839, 45 L.Ed.2d 562, Burger, C.J., dis.) The California statute is a reasonable answer to this dilemma.

The provision of section 1018 under attack here was enacted as part of the 1973 legislative response to Furman and was reenacted in 1977 in an effort to conform the law to Gregg. It is part of California's attempt to assure "reliability in the determination that death is the appropriate punishment in a specific case." (Woodson v. North Carolina (1976) 428 U.S. 280, 305, 49 L.Ed.2d 944 (plurality opn.).)

The statute serves "to protect the public interest in the fairness and integrity of the [death penalty] proceedings." (Massie v. Sumner (9th Cir. 1980) 624 F.2d 72, 74, cert. den. ___ U.S. ___ (Jan. 12, 1981).) There is a feeling among many that state-aided suicide is a moral anathema. As the Supreme Court of North Carolina put it, "a person should not sign his own death warrant and hang himself." (State v. Watkins (1973) 194 S.E.2d 800, cert. den. 414 U.S. 1000, 38 L.Ed.2d 235.) Some states will not permit a defendant to waive review of a death sentence. (Evans v. State (Ala. 1977) 361 S.2d 654; People v. Stanworth (1969) 71 Cal.2d 820; Commonwealth v. McKenna (Pa. 1978) 383 A.2d 174.) Others prohibit guilty pleas in capital cases. (Commonwealth v. Jones (Pa. 1947) 50 A.2d 317; Goodlet v. Goodman (N.J. 1961) 169 A.2d 140; State v. Green (La. 1952) 60 S.2d 208; Ex Parte

Stewart (Tex. 1951) 236 S.W.2d 799; People v. La Barbera (N.Y. 1937) 8 N.E.2d 884; State v. Watkins, supra, 194 S.E.2d 800.)

Section 1018 modifies an outright prohibition upon capital guilty pleas. If the defendant has no lawyer, the plea is not permitted. It is authorized if the defendant is represented by counsel who thinks the client has something to gain by pleading to the capital charge. As the Court below noted, counsel functions "as a filter to separate cases in which the defendant might reasonably gain some benefit by a guilty plea from capital cases in which the defendant, as here, simply wants the state to help him commit suicide." (Chadd, 28 Cal.3d at p. 753.)

Suicidal capital defendants pose another problem for the expeditious administration of a death penalty law -- they frequently change their minds, as this very case demonstrates. Rather than determining factual matters when a guilty plea is attacked collaterally, the California statute calls for factual findings made on the record in the first instance. The law thus promotes accuracy, reliability, and efficiency in death penalty litigation.

Petitioner claims the statute restricts Sixth Amendment rights by limiting Faretta to trials. (Pet. Cert., p. 28.) That is inaccurate. Under the California law a noncapital defendant can go pro. per. whenever he wishes and plead however he wishes. Nor does the statute infringe upon the right of a capital defendant to represent himself in pretrial, as well as trial proceedings. (People v. Teron (1979) 23 Cal.3d 103, 115.) Such a defendant is not, as petitioner suggests, forced to put on a case. He "has no duty to 'present a defense' but may simply 'put the state to its proof' . . . ." (Chadd, 28 Cal.3d at p. 750, fn. 7.)

The California law is a reasonable solution to a difficult problem. "[I]n capital cases . . . the state has a strong interest in reducing the risk of mistaken judgments. Nothing in Faretta, either expressly or implicitly, deprives the state of the right to conclude that the danger of erroneously imposing a death sentence outweighs the minor infringement of the right of self-representation resulting when defendant's right to plead guilty in capital cases is subjected to the requirement of his counsel's consent." (Chadd, 28 Cal.3d at p. 751.)

The Petition for a writ of certiorari should be denied.

Dated this 14th day of May, 1981, at Los Angeles, California.

Respectfully submitted,

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Chief Assistant State
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By Donald L.A. K

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THE PEOPLE OF THE STATE OF CALIFORNIA,
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v.
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MOTION TO PROCEED IN FORMA PAUPERIS

Respondent, BILLY LEE CHADD, by his undersigned counsel, asks leave to file the attached Brief in Opposition without prepayment of costs and to proceed in forma pauperis pursuant to rule 46.

Respondent has been represented by appointed counsel at trial, on appeal, and in these post-appeal proceedings.

DONALD L.A. KERSON
Deputy State Public Defender

Attorney for Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 80-1783

STATE OF CALIFORNIA,	:
Petitioner,	:
-against-	:
BILLY LEE CHADD,	:
Respondent.	:

I, BILLY LEE CHADD, being duly sworn, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees and to proceed in forma pauperis:

1. I am the respondent in the above-entitled case.

2. Because of my poverty I am unable to pay the costs of said cause; I own no real or personal property; I am incarcerated and receive no income from earnings.

3. I am unable to give security for said cause.

4. Counsel was appointed to represent me on my direct appeal and these post-appeal proceedings.

Billy Lee Chadd

BILLY LEE CHADD

Michael A. Coleman

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Michael A. Coleman
My Appointment Expires May 14, 1984

3-18-81

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I served a copy of Respondent's Brief in Opposition and Motion to Proceed In Forma Pauperis on Petitioner by depositing a copy in the United States mail, first class mail, postage prepaid, addressed as follows:

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All parties required to be served have been served.

Done this 14th day of May, 1981

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